

ORIGINAL



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July 31, 2000

RECORDS AND
REPORTING

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Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

RE: Docket Nos. ~~971186-SU~~ and 971186-SU

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of Citizens' Petition on Proposed Agency Action for filing in the above-referenced docket.

Also Enclosed is a 3.5 inch diskette containing the Citizens' Petition on Proposed Agency Action in WordPerfect for Windows 6.1 format. Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,

Stephen C. Reilly
Associate Public Counsel

SCR/dsb

Enclosures

- APP _____
- CAF _____
- CMP _____
- COM 3
- CTR _____
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- OPC _____
- PAI _____
- RGO 1
- SEC _____
- SER _____
- OTH 1

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Done 8/02/00

DOCUMENT NUMBER-DATE

09233 JUL 31 8

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

In re: Investigation of possible
overearnings by Sanlando
Utilities Corporation in Seminole
County.

DOCKET NO. 980670-WS

In re: Application for approval
of reuse project plan and
increase in wastewater rates in
Seminole County by Sanlando
Utilities Corporation.

DOCKET NO. 971186-SU

FILED: July 31, 2000

PETITION ON PROPOSED AGENCY ACTION

The Citizens of the State of Florida ("Citizens") by and through their undersigned attorney, pursuant to Section 120.57, Florida Statutes, and Rules 25-22.029 and 28-106.201, Florida Administrative Code, file these objections to portions of the Florida Public Service Commission's ("Commission") Order No. PSC-00-1263-PAA-WS ("Order"), issued July 10, 2000, and state:

- 1. The name and address of the agency affected and the agency's file number:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
Docket Nos. 980670-WS and 971186-SU

- 2. The Citizens include customers of Sanlando Utilities Corporation ("Utility" or "Sanlando") whose substantial interests will be affected by the Order because the Order provides that the Utility shall not account for nor be liable to pay refunds or otherwise credit customers for excess earnings realized by the Utility after January 1, 2000. The customers' substantial interests are also affected by the Order because the Order establishes the Utility's return on equity without properly auditing the books and records of the Utility and determining the capital structure of the Utility, and because

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FPSC-RECORDS/REPORTING

the Order does not provide any mechanism to test the prudence or reasonableness of the expenditures made by the Utility to construct or operate the reuse facilities.

3. Pursuant to Section 350.0611, Florida Statutes, the Citizens' who file this petition are represented by the Office of Public Counsel ("Citizens," "Petitioner" or "OPC") whose address is: Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400.

4. The Citizens received a copy of the Order by inter-office courier on July 11, 2000.

5. The Citizens' disputed issues of material fact, and the respective ultimate facts alleged are set forth below.

(a) The Commission's Order at page 8 states: "We recalculated the utility's 1999 revenues to include the amounts removed by the utility. After our adjustments, the utility's water system shows overearnings of \$249,720, and the utility's wastewater system shows overearnings of \$454,312."

(i) The Commission failed to audit the books and records of Sanlando in order to make a determination of the amount of 1999 overearnings. Instead the Commission merely used the results of the 1999 Annual Report filed with the Commission and made a few corrections to the Utility's presentation.

(ii) The Commission's failure to audit the books of Sanlando directly contrasts with its Order PSC-00-0111-PAA-WS, where in the Commission found that with respect to 1999 overearnings:

Although overearnings may have carried over to 1999, we hereby defer any change in rates until a comprehensive analysis of the utility's 1999 books can be done. This will

provide a full year's data of Utilities, Inc. management and costs for Sanlando. Implementing the estimated \$5,000,000 reuse project for Sanlando should eliminate any overearnings. Any potential overearnings for 1999 will be addressed once the utility submits its 1999 annual report and our staff completes an audit of the utility's books for 1999. (p. 21.)

Citizens have seen no evidence or even any indication that the Staff or the Commission conducted a thorough investigation into the 1999 earnings of Sanlando as ordered by the Commission. To the best of Citizens' knowledge, the Staff of the Commission did not conduct an audit as ordered by the Commission. Citizens believe that the Commission has failed to follow its own order. Accordingly, Citizens object to the Commission's conclusion about the amount of overearnings experienced in 1999.

- (iii) While one might suggest that the amount of overearnings in 1999 is irrelevant because the Commission disposed of the maximum amount allowable by prior orders, i.e., \$407,009, such a suggestion should be rejected. In making its determination below that there were no overearnings in total for the year 2000, the Commission utilized 1999 operating revenue, operating expenses, and rate base modified to assume the new reuse plant was in operation. Therefore, any potential overstatement of rate base and expenses or understatement of revenues that might be revealed in an audit would clearly influence the facts leading to the Commission's erroneous conclusion that there would be no overearnings in the year 2000.

- (b) The Commission's Order states, at page 9, that "After inclusion of the new reuse plant, we calculated that the utility will overearn on the water system by \$257,625, and underearn on the wastewater system by \$759,853, for net underearnings of \$502,228, using the approved rate of return on equity of 9.81% . . ."
- (i) Citizens object to the Commission's conclusion that for the year 2000 the Utility's water operations will overearn by \$257,625 and that its wastewater operations will underearn by \$759,853. The calculations which support these findings are erroneous. In contrast to the Commission's findings, Citizens believe that for the year 2000 the Utility will overearn on both its water and wastewater operations. There is no conceivable way in which the Utility could include in rate base the entire amount of the reuse project for the year-ending 2000, as the project has not even begun. Even if some of the plant's costs were included in rate base for the year ending 2000, Citizens believe the Utility will overearn. The wastewater rate base used to support the Commission's conclusion that the Utility will underearn on its wastewater operations in the year 2000 is overstated.
- (ii) Furthermore, the calculations that derived the amount of wastewater underearnings for the year 2000 included in operating expenses \$410,275 of operation and maintenance costs associated with the reuse project that will not be operational at least until the end of 2001, and more probably well into 2002.

- (iii) In addition, the revenues used to develop the net operating income for the water and wastewater operations are based solely on unaudited 1999 test year revenue. No analysis of the possible increase in operating revenues due to customer growth or abnormal weather conditions was undertaken by the Commission. Therefore, Citizens' believe the year 2000 operating revenues are understated.
- (iv) The Commission erred in estimating year 2000 operating results based upon 1999 test year data. Before the Commission can legitimately conclude that there was either overearnings or no overearnings for the year 2000, the Commission must wait until the year 2000 has ended. After the year 2000 has ended a full investigation of the Utility's operating revenue, expenses and rate base can be conducted to determine the degree to which the Utility did or did not over earn.
- (c) The Commission's Order, at page 9 states: "We find that the utility has provided ample evidence that it will not be over earning once the reuse plant project is initiated, and that acceptance of the utility's offer would be in the customers' best interests. We therefore approve Sanlando's Motion to Close Docket No. 980670-WS, filed March 31, 2000, and order that Sanlando's 1999 revenues held subject to refund (\$407,009) shall be charged to CIAC within 90 days of the effective date of this Order, that no further revenues shall be held subject to refund after January 1, 2000, and that the Utilities, Inc.'s corporate undertaking guaranteeing Sanlando's potential refund shall be canceled."

- (i) Citizens' dispute that the Utility provided ample evidence that there would be no overearnings once the reuse project is initiated.
- (ii) Citizens' disagree that no further revenues should be held subject to refund and that Utilities, Inc.'s corporate undertaking should be canceled. The Utility, under all but the most extreme case, i.e., it completes the project by year-end 2000, will over earn for the year 2000. Consequently, the Commission erred in removing the requirement that monies be held subject to refund for the year 2000 and that the corporate undertaking be canceled.
- (iii) In the past, the Commission under protected the dollars due to ratepayers. In 1999, the Utility overearned, by the Commission's calculations, by \$704,032. Yet, the Commission only held \$407,000 subject to refund for the year 1999. Therefore, ratepayers were under protected by \$297,023. The Commission should prevent such an injustice from happening in the future. Citizens recommend that the Commission order Sanlando to hold 13% of water and 22% of wastewater revenue subject to refund from this point forward for the years 2000 and 2001.
- (iv) The Commission's order is vague and does not indicate how the \$407,009 of overearnings for 1999 should be distributed. For example, should all of the \$407,009 be credited to wastewater CIAC or should some be credited to water CIAC, consistent with how the Commission ordered overearnings for 1997 and 1998 to be credited.

- (v) The Utility's water operations have been overearning since at least 1997. While crediting CIAC with the overearnings for wastewater is beneficial to customers in that it will help offset the cost of the reuse project, Citizen's don't agree that CIAC should necessarily be credited on the water operations. Crediting CIAC with past overearnings merely fuels the fire for future overearnings. The Commission should consider reducing water rates to eliminate future overearnings.
- (d) At page 10, the Commission's Order states: "The components of the capital structure used to calculate the ROE in this proceeding are unaudited."
 - (i) As stated above, the Commission should audit the capital structure of the Utility to ensure that its calculations of overearnings/underearnings for 1999 and 2000 are accurate.
 - (ii) The Commission failed to audit the books and records of the Utility as provided for in Order No. PSC-00-0111-PAA-WS.
- (e) At page 10 of the Order the Commission finds: "Because the utility has complied with Order No. PSC-00-0111-PAA-SU, by filing its amended application for approval of the reuse project plan, and the utility is not requesting recovery of the costs of the reuse project in its application, we hereby approve the utility's reuse project plan filed March 10, 2000."
 - (i) The Commission's Order is vague in that it does not specify precisely what about the reuse project that it is approving.

- (ii) Any such approval must be conditioned so that such approval does not endorse the cost of the project, or that the costs were prudently incurred. Such a determination can only be made after the project is complete and subjected to thorough scrutiny.

6. Chapter 367.081, Florida Statutes, is a specific statute the Petitioner contends requires reversal or modification of the agency's proposed action.

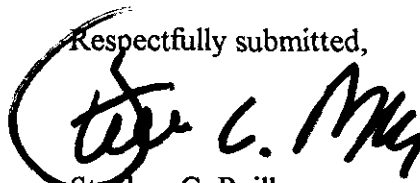
7. The Petitioner seeks the Commission to take the following actions with respect to the agency's proposed action.

- (a) Keep the overearnings Docket No. 980670-WS open even if the docket is consolidated into the reuse project Docket No. 971186-SU.
- (b) Conduct an audit of the Utility's books for the years 1999 and 2000.
- (c) Establish the Utility's proper return on equity after the audit of the Utility's books and records for 1999 is completed and the Commission has verified the Utility's capital structure.
- (d) Order the Utility to hold 13% of water and 22% of wastewater revenues subject to refund from this point forward for the years 2000 and 2001, or until the rates for the respective service (i.e. water or wastewater) are reduced.
- (e) The Utility's corporate undertaking should not be cancelled, but should be increased to guarantee the payment of the monies being held subject to refund.
- (f) Immediately after the audit of the 1999 books is completed the Commission should reduce the Utility's water rates on a going forward basis, as required by Chapter 367.081(4)(d), Florida Statutes.

- (g) Since approximately 20% of the Utility's water customers are not wastewater customers the Commission should order that 1999 and 2000 overearnings from water operations be credited to CIAC for water plant and that 1999 and 2000 overearnings from wastewater operations be credited to CIAC for wastewater plant.
- (h) No utility investment in new reuse plant should be included in rate base for purposes of any overearnings determination until the investment is actually made by the Utility, and then such investment should be included in rate base only on a 13 month average basis.

WHEREFORE, the Citizens hereby protest and object to those specific portions of Commission Order No. PSC-00-1263-PAA-WS, as specified above and petitions the Commission to conduct a formal evidentiary hearing, under the provisions of Section 120.57(1), Florida Statutes, and further petitions that such hearing be scheduled at a convenient time within or as close as practical to the Utility's certificated service area.

Respectfully submitted,



Stephen C. Reilly
Associate Public Counsel

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111 W. Madison Street
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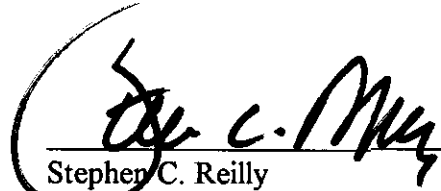
(850) 488-9330
Attorney for the Citizens

CERTIFICATE OF SERVICE
DOCKET NO. 980670-WS

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition on Proposed Agency Action has been furnished by U.S. Mail or *hand-delivery to the following parties this 31st day of July, 2000.

Jennifer Brubaker, Esquire*
Division of Legal Services
Florida Public Service Commission
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Tallahassee, FL 32399-0850

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Stephen C. Reilly
Associate Public Counsel